

REMARKS

1. The Office Action of January 30, 2007 is hereby acknowledged. The shortened statutory period of three (3) months time period for response to this Office Action expired on April 30, 2007. Concurrently with the filing of this Amendment, the Applicant has requested a two-month extension of time and has paid the appropriate fee. Therefore, the deadline for filing the Amendment is June 30, 2007. This Amendment is being mailed by Express Mail, Mail Label No. EV 935022709 US, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on June 12, 2007. Therefore, this Amendment is timely filed. In the event that the Commissioner for Patents should determine that any additional extension of time is required for this Amendment to be timely filed and an appropriate fee is due for that extension of time, then the Commissioner for Patents is hereby authorized to charge Deposit Account Number 18-2222 for such appropriate fee.

2. The claims that are pending in this application are Claims 1-14 and 32-45. The claims have not been amended or modified and no additional claims have been added. Therefore, there are now 28 total claims of invention wherein 6 are independent claims. Therefore, no additional fee is due. In the event that the Commissioner for Patents should determine that any additional fee is due, then the Commissioner for Patents is hereby authorized to charge Deposit Account Number 18-2222 for the appropriate fee.

3. The Applicant very much appreciates the Patent Examiner's very extensive work in the Office Action sent on January 30, 2007. It is very clear that the Patent Examiner has gone to a great deal of effort in order to very clearly set forth the Patent Examiner's reasons as to why the Examiner believes that the present invention is obvious based upon newly cited references to Kawashima, Krinsky, McClelland and Ito. The Applicant has very carefully studied all of the references cited by the Examiner and very carefully studied everything that the Patent Examiner stated. The Applicant very respectfully disagrees with the Patent Examiner and believes that the

1 Patent Examiner is incorrect because the cited references are truly totally different from the
2 present invention and do not in any disclose the present invention or make the present invention
3 obvious. The Applicant will now discuss in detail the arguments as to why the present invention
4 is allowable over all the cited references.
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6 4. The first primary reference cited by the Examiner is United States Patent
7 4,557,060 issued on December 10, 1985 to Kawashima for 'INSOLE WITH EXCHANGEABLE
8 RELIANT PIECES' ("Kawashima"). This patent is being cited for the first time in relation to
9 the present invention. The Patent Examiner is respectfully requested to look at the Applicant's
10 drawings and see Figures 2, 6, 10, 16, and 17 compared to the Kawashima drawings in Figures 1
11 through 5. Just by looking at the devices themselves without any further argument, it is
12 abundantly clear that the two inventions are absolutely and totally different and have nothing
13 whatsoever to do with each other. The Applicant will now present more detailed arguments to
14 explain to the Examiner why the two inventions are totally dissimilar and why the present
15 invention is not obvious in view of the Kawashima reference and, further, will address all of the
16 Examiner's arguments point by point.
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18 4.01 First, an examination of Kawashima shows it to be a utility patent teaching
19 an insertable, interchangeable, shock absorbing insole comprised of "exchangeable piece[s] of
20 resilient foam synthetic resin having higher durometer hardness than that of an insole body and
21 inserted in a recess formed in the insole body." (Col. 1, lines 31-35).

22 4.01.01 It is abundantly clear that what Kawashima had in mind was to
23 take a shoe sole, which is to be inserted into a shoe and which is used in addition to the shoe sole
24 that is already incorporated into the shoe, and adapt it so that it provides a cushioning support
25 pad for two areas of the foot so that the entire assembly provides a customizable and adaptable
26 cushioning and shock absorption for the forefoot and heel areas of the foot, particularly
27 adaptable to suit the shock absorption requirements. It is clear from just an examination of the
28 drawings of the present invention alone, that the present invention is completely different from
Kawashima. The shoe sole of the present invention does not provide cushioning for two areas of

1 the foot, but instead is under one section of the foot, specifically the toes, beginning along the
2 area along the upper border of the ball of the foot at the base of the toes starting right below and
3 including the ball of the big toe and the other digits and extending to at least the ends of the toes;
4 the portion under the toes is not for cushioning or shock absorption, but instead is for tactile
5 sensory stimulation of the toes; the toe support of the present invention does not provide shock
6 absorption that is adaptable and interchangeable to suit specific sports requirements, but instead
7 disperses the load forces by the toes during the grasping-gripping motion of the toes during
8 walking. Therefore, it is abundantly clear that the cushioning elements of the Kawashima insole
9 are completely different from the cushioning element of the present invention.

10 4.01.02 In addition, referring to Figures 1 through 5, the Kawashima
11 design illustrates the cushion inserts to be comprised of the same foam synthetic resin of which
12 the molded insole body is comprised, the difference between the two being that the cushions are
13 of a higher durometer hardness than that of the insole body. The Kawashima design requires the
14 two cushion pads to be made of foam resin. It is abundantly clear that what Kawashima intended
15 was to have the shoe insert designed in such a manner as to also provide, not just support for the
16 foot, but specific and advantageous shock absorption and improved responses to the foot strike
17 under the heels of the foot and under the balls of the foot during sports activities. An
18 examination of the present invention, as well as Figures 2, 6, and 10, shows very clearly that the
19 toe cushion is not made of the same material as the body of the shoe insert, but is instead made
20 of a deformable gel, which is a different material from the body of the sole; the toe cushion of
21 the present invention does not provide cushioning under the heel and under the balls of the foot,
22 but, instead, lies immediately under the toes of the foot only, and provides a means for the toes to
23 perform the natural grasping-gripping motion during walking. Therefore, it is abundantly clear
24 that the cushioning elements of the Kawashima design is composed of a totally different material
25 and serves a totally different purpose than that of the present invention. Therefore, it is
26 abundantly clear that the cushioning elements of the Kawashima insole are completely different
27 from the cushioning element of the present invention.

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4.01.03 In addition, referring to Figures 1, 2, and 3, and Column 1, line 65 through Column 2, line 3, the Kawashima design teaches that the cushioning elements of the Kawashima insole fit into the body of the insole, as well as being held in the body of the insole, by means of a combination of projections 6 and 6' that around which the notches 7 and 7' of the insertable cushions fit. It is clear that what Kawashima intended was to have the cushioning elements for the heel and the balls of the foot to be interchangeable and to provide a means to prevent lateral movement of the cushion inserts. Therefore, the cushioning elements are inserted into the body of the insole like pieces of a puzzle and held in place by means of these projections and notches. An examination of the present invention, as well as figures 1, 8, 12, 19, and 20, clearly show that the toe cushion does not utilize a series of projections and corresponding notches to retain the toe cushion in place, but instead, is built inside, inserted inside, or engineered inside a chamber or cavity inside the shoe sole area, with said chamber or cavity being without any projection and with said insert without any notches. It is further clear that the cushioning element of the present invention is not related to the manner of retaining the toe cushion in the insole or the appearance of the toe cushion related to the manner of retaining the toe cushion in the insole. Therefore, it is abundantly clear that the cushioning elements of the Kawashima insole are completely different from the cushioning element of the present invention.

4.01.04 In addition, referring to Figure 5, the Kawashima design illustrates that the cushioning elements of the Kawashima insole is designed in such a manner that the insole can also be effective, in its present design, if the insole is inserted into the shoe upside down, such that the upper surface of the cushioning elements are facing and touching the interior surface of the sole of the shoe. Further, the cushioning elements of Kawashima do not occupy the entire depth of the insole, but instead, only occupy a portion of the depth of the body of the insole having the remainder of the depth a continuation of the body of the insole. Therefore, the cushioning elements are lodged within the body of the insole and do not pass through and therefore, when the insole is placed in the shoe upside down, as shown in Figure 5, the foot of the wearer does not come into direct contact with the cushioning elements of the Kawashima design. An examination of the present invention, as well as Figures 2, 6, 10, 16, and

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17, clearly shows that the toe cushion cannot be placed upside down, but instead, the present invention requires that the that the toe cushion must be in immediate contact with the toes of the wearer; so as to enable the toes to perform the natural grasping-gripping motion during walking. Therefore, it is abundantly clear that the cushioning elements of the Kawashima patent are designed in a completely different manner and serve a totally different purpose. Therefore, it is abundantly clear that the cushioning elements of the Kawashima insole are completely different from the cushioning element of the present invention.
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4.01.05 In addition, referring to Col. 2, lines 4-7, and Col. 1, lines 61-64, the Kawashima design teaches that the insertable insole is provided with several pairs of resilient pieces of differing hardness and elasticity to be inserted into the recesses of the body of the insole to suit the sport and the user's weight. It is clear that what Kawashima intended is to have an insertable insole that is designed to be worn specifically during sports that has interchangeable pieces of differing hardness and elasticity of cushioning for under the heel and the balls of the foot. It is clear that the Kawashima design is a sports insole that the user may customize by changing the cushions under the heel and balls of the foot, as according to the needs of the sport. An examination of the present invention, including Figures 6,10, and 17, clearly shows that the toe cushion of the present invention is not designed to provide cushioning for the heel and the balls of the foot to be customized for use in sports, but instead is to facilitate the grasping-gripping function of the toes; the toe cushion of the present invention is not customizable for sports, but instead is designed to improve the natural walking function via the toe cushion to allow the natural grasping-gripping motion of the toes. Therefore, it is abundantly clear that the cushioning elements of the Kawashima insole are completely different from the cushioning element of the present invention.

4.01.06 Because of the foregoing, it is abundantly clear that the Kawashima patent teaches a design that is completely and totally dissimilar from the present invention and, further, has absolutely and totally nothing to do whatsoever with the present invention.

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5. The second primary reference cited by the Examiner is United States Patent 4,211,236 issued on July 8, 1980 to Krinsky for 'ORTHOPEDIC CUSHION AND METHOD FOR FITTING THEREOF' ("Krinsky"). This patent is being cited for the first time in relation to the present invention. The Patent Examiner is respectfully requested to look at the Applicant's drawings and see Figures 2, 6, 7, 8, 10, 16, and 17 compared to the Krinsky drawings in Figures 1 through 7. Just by looking at the devices themselves without any further argument, it is abundantly clear that the two inventions are absolutely and totally different and have nothing whatsoever to do with each other. The Applicant will now present more detailed arguments to explain to the Examiner why the two inventions are totally dissimilar and why the present invention is not obvious in view of the Krinsky reference.

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5.01 First, an examination of Krinsky shows it to be a utility patent teaching an adjustable cushion that cushions the entire bottom surface of the foot and is adjusted by means of adding to or removing from the quantity of highly viscous material within the interior of the cushion.

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5.02 It is abundantly clear that what Krinsky had in mind was to take a pouch filled with a liquid gel, wherein the quantity of gel is adjustable, and place it inside a shoe wherein it resides under the entirety of the foot so as to provide support and stability for the foot. It is clear from just an examination of the drawings of the present invention alone, that the present invention is completely different from Krinsky. The shoe sole of the present invention does not provide cushioning for the entire area under the foot, but instead is under one section of the foot, specifically the toes; the portion under the toes is not for cushioning, but instead is for tactile sensory stimulation of the toes; the toe support of the present invention does not provide stability and cushioning for the foot, but instead disperses the load forces by the toes during the grasping-gripping motion of the toes during walking.

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5.03 In addition, referring to Figures 1 through 7, the Krinsky design illustrates the cushion to be comprised of dual chambers into which the lesser chamber may either receive excess gel from the main chamber or from which the lesser chamber may inject more gel into the main chamber. The Krinsky design requires that the cushioning element be adjustable. To

1 achieve the required adjustability, Krinsky requires that the gel "remains flowable and does not
2 set within the envelope" (Col. 4, lines 14, 15). Further, Krinsky requires that the envelope be air
3 tight to enable the volume of gel to be "preferably all under partial vacuum" (Col. 4, lines 28-
4 29). Further, the means for making the adjustments requires the addition of a diverticulum to the
5 vacuumed, cushioning element, so as to pump gel in to the main chamber or to suck gel out of
6 the main chamber. Further, Krinsky teaches the method for fitting the orthopedic cushion is that
7 "the cushion can be placed in a shoe and the foot placed thereover while the member [the
8 diverticulum] proceeds upwardly along the side of the foot and out of the shoe adjacent the inner
9 portion of the ankle joint." (Col. 3, lines 25-29). The shoe sole of the present invention does
10 not have an adjustable cushion, but instead is not adjustable. The shoe sole of the present
11 invention is not comprised of dual chambers, but instead is a single cell. The shoe sole of the
12 present invention does not require, nor is it under, partial vacuum, but instead is under normal
13 atmospheric pressure. The shoe sole of the present invention does not have a gel that is capable
14 of flowing movement or complete displacement, but instead is a deformable gel that is less
15 viscous than that of the Krinsky design. The shoe sole of the present invention does not have a
16 diverticulum to facilitate the exchange of gel, but instead is merely a single, crescent shaped cell
17 that contains the full requirement of interior material to which none is added or removed after
18 manufacture. Further, the present invention is not a method to fit the cushion, but instead is a
19 device to provide tactile stimulation to the pads of the toes. Therefore, it is abundantly clear that
20 the cushioning element of the Krinsky cushion is entirely different from the cushioning element
21 of the present invention. It is further apparent that the Krinsky patent is totally and completely
22 different from the present invention in every respect and has nothing whatsoever to do with the
23 present invention.

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25 6. The Applicant will now address the Examiner's statements that are made in the
26 Office Action concerning the Kawashima reference.
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28 6.01 The Examiner states beginning at paragraph 2 on Page 2 of the Office
Action, "Claims 4, 6, 7, 10, 11, 12, 35, 37, 41, 42, 43 are rejected under 35 U.S.C. 102(b) as

1 being anticipated by US4557060 (Kawashima). Kawashima teaches a foot wearing item
2 including an insole (1), a midsole and an outsole (see the figures and col.2, lies 29-32)
3 comprising a flexible and deformable material (foam insert; see col. 1, lines 61-64) fitted within
4 a cavity in the front portion of the sole. The foam insert 4 is placed underneath the areas of the
5 foot that correspond to the toes and metatarso-phalangeal joint (see figure 4) and therefore will
6 permit the toes to curl downward when walking. Moreover, even if the foam padding was
7 substantially hard, it would still allow the toes to curl downward, this would be possible in most
8 types of footwear. Furthermore, most of the independent claims are broader inasmuch as they
9 call for “the toes to curl, flex, bend **or** grasp downward when a wearer of the shoe is walking.””
10 The Applicant respectfully disagrees with the Examiner and suggests that the Examiner has
11 misread the Kawashima design. While Kawashima does show an improvement comprising a
12 flexible and deformable material, the cushioning element “which conforms generally in outline
13 to the foot” (Col. 2, lines 66-67), which is fitted within a cavity in the front portion of the sole,
14 the foam insert 4 is not located in an area encompassing the tips of the toes to the base of the
15 toes, but is instead from the base of the toes to the balls of the feet. Further, because the
16 deformable gel is underneath the balls of the feet it is not in an area where a toe can grasp it, but
17 is instead just beyond the reach of the toes. Therefore, Claims 4, 6, 7, 10, 11, 12, 35, 37, 41, 42,
18 and 43 are allowable.

19 6.02 The Examiner states beginning at paragraph 3 at the bottom of Page 2 and
20 continuing on Page 3 of the Office Action, “Claims 10, 12, 13, 41, 43, 44 are rejected under 35
21 U.S.C. 102(b) as being anticipated by US 4211236 (Krinsky). Krinsky teaches a foot wearing
22 item including an insole (top layer 18 of cushion 10 is inherently an insole inasmuch as it is
23 placed in the shoe and makes contact with the foot; see col. 3 lines 25-27) comprising a flexible
24 and deformable material (flowable, highly viscous material 34) aligned with the insole. The
25 cushion is placed underneath all areas of the foot including the toes and metatarso-phalangeal
26 joint (see figure 3) and therefore will permit the toes to curl downward when walking.” The
27 Applicant respectfully disagrees with the Examiner and respectfully suggests that the Examiner
28 has misapplied and misunderstood Krinsky. While Krinsky does teach a foot wearing item that

1 makes contact with the entirety of the bottom of the foot, the gel area is also under the entirety of
2 the foot and under the pressure of the weight of the entire body. While the gel is a flowable,
3 highly viscous material, the gel is under the pressure of the entire body and cannot therefore be
4 grippable, or graspable by the toes alone as the pressure will prevent localized movement under
5 the pads of the toes. Therefore, Claims 10, 12, 13, 41, 43, and 44 are allowable.
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7 6.03 The Examiner states in the first full paragraph on Page 3 of the Office
8 Action, "Regarding claim 12 and the like, see col. 1, line 13-15 wherein it refers the cushion can
9 be used by athletes and therefore the cushion can inherently be used in athletic shoes." The
10 Applicant respectfully disagrees with the Examiner. While Krinsky does illustrate all of the
11 above in an enclosed, athletic shoe, it is impractical to be applied to other types of shoes, such as
12 dress shoes and sandals, whereas the present invention can be applied to any type of shoe.
Therefore, Claim 12 and the like, are allowable.

13 6.04 The Examiner states in the second full paragraph on Page 3 of the Office
14 Action, "Regarding claim 13 and the like, the cover 18 or 20 or second envelope 60 can all serve
15 as a cover." The Applicant respectfully disagrees with the Examiner. While Krinsky does
16 illustrate an envelope, the Krinsky "envelope is formed of a flexible material such as various
17 plastics, for example polyvinyl chloride film or sheeting or polyester film" (Col. 3. Lines 5-8) for
18 the purpose not just providing a contained area for the gel but mainly to create an airtight
19 envelope in which a "partial vacuum" (Col. 4, line 29). Thus, the plastic film or sheeting is not
20 the cover for the flexible and deformable material, but is an essential and integral part of that
21 which comprises the flexible and deformable portion of the Krinsky cushion. Krinsky requires
22 some other covering material to be placed over the plastic cushion or else the user's foot would
23 reside directly on the plastic. Krinsky requires a covering material over the plastic to prevent the
24 foot sticking to the plastic, to prevent the foot from developing blisters, and to absorb the sweat
25 and odors of the foot. This is the type of covering described in Claim 13 and the like. Therefore,
26 as the Krinsky design is completely different and does not apply to the present invention, Claim
27 13 and the like are allowable.

28 6.05 The Examiner states in paragraph 5 on Page 3 of the Office Action, "Claims

11, 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krinsky '236. Krinsky
2 teaches a footwear item as claimed (see the rejection above) except for the viscous material
3 being one of those claimed. Krinsky doesn't provide a list of different types of viscous material
4 that can be used. Nonetheless, it would have been obvious to one having ordinary skill in the art
5 at the time the invention was made to construct the viscous flowable material out of a gel or the
6 like, since it has been held to be within the general skill of a worker in the art to select a known
7 material on the basis of its suitability for the intended use as a matter of obvious design choice.
8 *In re Leshin*, 125 USPQ 416." The Applicant respectfully disagrees with the Examiner and
9 respectfully suggests that the Examiner has misunderstood and misapplied Krinsky. As stated
10 above, Krinsky requires a gel material that is so viscous that it can flow freely from one chamber
11 to another. The present invention in Claims 11 and 42 describe semi-solid gels, and solid, but
12 deformable, foams, rubber, and plastics, whose volumes may be deformed but are incapable of
13 easily having volumes that are flowable back and forth between two chambers. It is abundantly
14 clear that the Krinsky design teaches a gel that is completely and totally different from the
15 present invention. Therefore, Claims 11 and 42 are allowable.

16 6.06 The Examiner states in paragraph 6 on Page 4 of the Office Action, "Claims
17 14 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krinsky '236 in view
18 of official notice. Krinsky teaches a footwear item as claimed (see the 102 rejection above for
19 details) the flexible and deformable material treated with a fungicide. The examiner takes
20 official notice that it is old and conventional in the art to provide shoe pads, cushions, insole, etc.
21 with a fungicide. Therefore, it would have been obvious to provide the flexible and deformable
22 material of Krinsky with a fungicide, to prevent fungus." As discussed in full above, Krinsky is
23 totally and completely different from the present invention and has nothing whatsoever to do
24 with the present invention. The present invention is a particular device for tactile stimulation of
25 the pads of the toes during the grasping-gripping motion that occurs during walking. Therefore,
26 the Applicant respectfully disagrees with the Examiner and suggests that the Examiner has
27 misapplied Krinsky. While the present invention does lie within a shoe, it is essentially and
28 primarily a means to provide tactile stimulation to the toes and a physical means to recreate the

1 grasping-gripping motion of the toes. The Applicant respectfully suggests that it is not old or
2 conventional to have tactile stimulants treated with a fungicide. It is abundantly clear that the
3 Krinsky design is completely different from the present invention and does not apply. Therefore,
4 Claims 14 and 45 are allowable.

5 6.07 The Examiner states in paragraph 7 on Page 4 of the Office Action,
6 "claims 1-6, 8-14 and 32-37, 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable
7 over Krinsky '236 in view of official notice. Krinsky teaches a foot wearing item including a
8 deformable padding (cushion 10 is placed in the shoe and makes contact with the foot; see col. 3,
9 lines 25-27) comprising a flexible and deformable material (flowable, highly viscous material
10 34). The cushion is placed underneath all areas of the foot including the toes and metatarso-
11 phalangeal joint (see figure 3) and therefore will permit the toes to curl downward when
12 walking. Some of the claims only require the toes to flex or bend; such claims as 1, 4, 32, 35
13 which is extremely broad with that aspect. Krinsky teaches the deformable padding placed in a
14 shoe but doesn't teach that aspect of the shoe. The examiner takes official notice that it is old
15 and conventional in the art to have a shoe which includes an outsole, a midsole and an insole.
16 Therefore, it would be obvious to place the deformable padding (cushion 10) of Krinsky in a
17 shoe having an insole, a midsole, and an outsole. The cushion is placed on top of the insole and
18 therefore is aligned with the insole." The Applicant respectfully disagrees with the Examiner
19 and respectfully suggests that the Examiner has misunderstood and misapplied the Krinsky
20 design. As stated above, while Krinsky does teach a foot wearing item that makes contact with
21 entirety of the bottom of the foot, the gel area is also under the entirety of the foot and under the
22 pressure of the weight of the entire body. While the gel is a flowable, highly viscous material,
23 the gel is under the pressure of the entire body and cannot therefore be grippable, or graspable by
24 the toes alone as the pressure will prevent localized movement under the pads of the toes. Thus,
25 it is abundantly clear that the Krinsky design is completely and totally different from the present
26 invention and has nothing whatsoever to do with the present invention. Therefore, Claims
27 claims 1-6, 8-14 and 32-37, 39-45 are allowable.

1 6.08 The Examiner continues in the first full paragraph on Page 5 of the Office
2 Action, "With regard to the deformable material be a gel or the like, Krinsky doesn't provide a
3 list of different types of viscous material that can be used. Nonetheless, it would have been
4 obvious to one having ordinary skill in the art at the time the invention was made to construct the
5 viscous flowable material out of gel or the like, since it has been held to be within the general
6 skill of a worker in the art to select a known material on the basis of its suitability for the
7 intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416." The Applicant
8 respectfully disagrees with the Examiner and suggests that the Examiner has misunderstood and
9 misapplied the Krinsky design. As stated above, Krinsky requires a gel material that is so
10 viscous that it can flow freely from one chamber to another. The present invention describes
11 semi-solid gels, and solid, but deformable, foams, rubber, and plastics, whose volumes may be
12 deformed but are incapable of easily having volumes that are flowable back and forth between
13 two chambers. It is abundantly clear that the Krinsky design teaches a gel that is completely and
14 totally different from the present invention. Therefore, claims relating to the deformable
15 material being a gel and the like are allowable.

16 6.09 The Examiner continues in the middle of Page 5 of the Office Action,
17 "Regarding Claim 5 and the like, the cushion appears to have a thickness as claimed. To the
18 extent that it does not, it would appear to be an obvious design choice to construct it with a
19 thickness as claimed in as much as a number of different thicknesses appear to be suitable
20 depending on the size of the wearer and the sport being played." The Applicant respectfully
21 disagrees with the Examiner. The Krinsky design is of varying depths depending on the space
22 available between the bottom of the foot and the insole of the shoe. As shown in Figure 3 of the
23 Krinsky design, the depth of thickness under the toes is significantly less than 6 mm. As
24 discussed above, the Krinsky patent resides not in the insole of the shoe, but lies above and upon
25 the insole of the shoe, upon which the foot resides, both of which are inside the shoe and must fit
26 between the insole of the shoe and the top of the shoe. In such a situation, it is impossible to
27 have a cushion of at least 6 mm, as well as the entire foot or even just the toes inside the interior
28 of a shoe. It is abundantly clear that the Krinsky design is totally and completely different from

1 the present invention and has nothing to do with the present invention, and, further, that it is
2 impractical and impossible to apply Krinsky in relation to these claims and the present invention
3 as a whole. There fore, Claim 5 and the like are allowable.
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5 6.10 The Examiner continues towards the bottom of Page 5 of the Office Action,
6 “Regarding Claim 6 and the like, an insole is naturally placed over the midsole and therefore is
7 aligned with the midsole.” The Applicant respectfully disagrees with the Examiner. The
8 cushion of the present invention does not merely lie within the insole, like the cushion of
9 Kawashima, nor does it lie upon the insole like the cushion of Krinsky, but instead, the toe
10 cushion of the present invention, being at a thickness of at least 6 mm, lies through the insole of
11 the shoe and into the midsole of the shoe, and thus, the present invention is aligned with a
12 portion of the midsole in addition to being aligned with the insole. Neither Kawashima nor
13 Krinsky has a cushion that goes beyond the depth of the insole, and therefore, has nothing
14 whatsoever to do with the present invention. Therefore, Claim 6 and the like are allowable.
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16 6.11 The Examiner continues towards the bottom of Page 5 of the Office Action,
17 “Regarding claim 12 and the like, see col. 1, line 13-15 of Krinsky wherein it refers the cushion
18 can be used by athletes and therefore the cushion can inherently be used in athletic shoes.” The
19 Applicant respectfully disagrees with the Examiner. While Krinsky does illustrate use in an
20 athletic shoe, it is impractical to be applied to other types of shoes, such as dress shoes and
21 sandals, whereas the present invention can be applied to any type of shoe. Therefore, Claim 12
22 and the like, are allowable.
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24 6.12 The Examiner continues at the bottom of Page 5 of the Office Action,
25 “Regarding claims 2 and 13 and the like, the cover 18 is a cover and is capable of being stretched
26 and therefore is a stretchable material. The Applicant respectfully disagrees with the Examiner
27 and respectfully suggests that the Examiner has misapplied the Krinsky design. As discussed
28 previously, the Krinsky design is an “envelope [which] is formed of a flexible material such as
various plastics, for example polyvinyl chloride film or sheeting or polyester film” (Col. 3. Lines
5-8) for the purpose not just providing a contained area for the gel but mainly to create an
airtight envelope in which a “partial vacuum” (Col. 4, line 29). Thus, the plastic film or sheeting

1 is not the cover for the flexible and deformable material, but is an essential and integral part of
2 that which comprises the flexible and deformable portion of the Krinsky cushion. Krinsky
3 requires some other covering material to be placed over the plastic cushion or else the user's foot
4 would reside directly on the plastic. Krinsky requires a covering material over the plastic to
5 prevent the foot sticking to the plastic, to prevent the foot from developing blisters, and to absorb
6 the sweat and odors of the foot. This is the type of covering described in Claim 13 and the like.
7 Therefore, as the Krinsky design is completely different and does not apply to the present
8 invention in any manner whatsoever, Claims 2 and 13 and the like are allowable.

9 6.13 The Examiner continues at the top of Page 6 of the Office Action,
10 “Regarding treating the padding with a fungicide, the examiner takes official notice that it is old
11 and conventional in the art to provide shoe pads, cushions, insole, etc. with a fungicide.
12 Therefore, it would have been obvious to provide the deformable padding as taught above with a
13 fungicide, to prevent fungus.” As discussed in full above, Krinsky is totally and completely
14 different from the present invention and has nothing whatsoever to do with the present invention.
15 The present invention is a particular device for tactile stimulation of the pads of the toes during
16 the grasping-gripping motion that occurs during walking. Therefore, the Applicant respectfully
17 disagrees with the Examiner and suggests that the Examiner has misapplied Krinsky. As
18 discussed previously, while the present invention does lie within a shoe, it is essentially and
19 primarily a means to provide tactile stimulation to the toes and a physical means to recreate the
20 grasping-gripping motion of the toes. The Applicant respectfully suggests that it is not old or
21 conventional to have tactile stimulants treated with a fungicide. It is abundantly clear that the
22 Krinsky design is completely different from the present invention and does not apply. Therefore,
23 Claims 14 and 45 are allowable.

24 6.14 The Examiner states in paragraph 8 on Page 6 of the Office Action, “Claims
25 1 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawashima ‘060 in
26 view of US 4768295 (Ito). Kawashima teaches a footwear item as claimed (see the 102 rejection
27 above for details) except for the deformable material being a gel. Ito teaches a cushioning
28 member placed in a cavity of the sole filled with a gel. It would have been obvious to one of

1 ordinary skill in the art to form the cushioning members of Kawashima to be a gel filled
2 cushioning member, as taught by Ito, to facilitate absorbing the shock instantly.” The Applicant
3 respectfully disagrees with the Examiner and respectfully suggests that the Examiner has
4 misapplied both Kawashima and Ito, and that neither Kawashima nor Ito has anything
5 whatsoever to do with the present invention.

6 16.14.01 The design taught by Ito is completely and totally different from
7 the present invention. An examination of Figures 1-6 alone illustrate a device that is completely
8 and totally different from the present invention. An examination of Ito shows it to be a utility
9 patent teaching a shock absorbing insole comprised of membranes and chambers for the purpose
10 of providing both cushioning and lateral support of the foot and is specifically designed for
11 sports shoes. It is abundantly clear that what Ito had in mind was to take a shoe sole and adapt it
12 so that it provides a cushioning support pad for two areas of the foot and so that the entire
13 assembly provides a special shock absorber with the special property of providing a repulsion
14 force when kicking. (See abstract, et. al.). It is clear from just an examination of the figures of
15 the present invention alone, that the present invention is completely different from Ito. The shoe
16 sole of the present invention does not provide cushioning for two areas of the foot, but instead is
17 under one section of the foot, specifically the toes; the portion under the toes is not for cushion
18 or for support or for repulsion force, but instead is for tactile sensory stimulation of the toes; the
19 toe support of the present invention does not provide a repulsion force when kicking, but instead
20 disperses the load forces by the toes during the grasping-gripping motion of the toes during
21 walking.

22 6.14.02 In addition, referring to Figures 2, 4, 5, and 6, the Ito design
23 illustrates the cushion to be comprised of channels, grooves, or a plurality of chambers. The Ito
24 design requires the two support pads to provide a repulsion force. It is abundantly clear that
25 what Ito intended was to have the structural cushioning elements of the shoe designed in such a
26 manner as to also provide, not just support for the shoe, but also to perform a “double duty” by
27 creating a repulsion force, as discussed above. An examination of Figures 9 and 10 of the
28 present invention shows very clearly that the toe cushion of the toe cushion does not have any

1 channels, grooves, or a plurality of chambers, but is instead one open, internally unimpeded cell.
2 Further, Ito describes the cushioning elements to be located under the balls of the toes, whereas,
3 as discussed above, the present invention requires the toe cushion to reside in the area from the
4 base of the toes to the tips of the toes. Therefore, it is abundantly clear that the cushioning
5 elements of the Ito design is composed of a totally different material and serves a totally
6 different purpose.

7 6.14.03 As discussed above, Kawashima has nothing whatsoever to do
8 with the present invention. Further, as discussed above in detail, Kawashima does not reside in
9 an area comprising the base of the toes to the tips of the toes so as to provide tactile stimulation
10 to the pads of the toes, but instead Kawashima provides cushioning to the balls of the feet.
11 Therefore, and as discussed above, Kawashima is completely and totally different from the
12 present invention. Further, as discussed above, Ito has nothing whatsoever to do with the present
13 invention and does not add anything to Kawashima in relation to the present invention.
14 Therefore, Claims 1 and 32 are allowable.

15 6.15 The Examiner states in paragraph 9 on Page 6 of the Office Action, "Claims
16 5 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawashima.
17 Kawashima teaches a foot wearing item (see the details in the 102 rejection above) except for the
18 thickness of the deformable padding. The padding appears to be of the depth as claimed,
19 however the dimensions are not given. It would appear to be an obvious design choice to
20 construct the padding with a thickness as claimed inasmuch as a number of different thicknesses
21 appear to be suitable depending on the size of the wearer and the sport being played." The
22 Applicant respectfully disagrees with the Examiner. The Kawashima design is of a very thin
23 depth. As shown in Figures 4 and 5 of the Kawashima design, the depth of thickness under the
24 toes is significantly less than 6 mm. As discussed above, the Kawashima patent resides not in
25 the insole of the shoe, but lies above and upon the insole of the shoe, upon which the foot
26 resides, both of which are inside the shoe and must fit between the insole of the shoe and the top
27 of the shoe. In such a situation, it is impossible to have a cushion of at least 6 mm, as well as the
28 entire foot or even just the toes inside the interior of a shoe. It is abundantly clear that the

1 Kawashima design is totally and completely different from the present invention and has nothing
2 to do with the present invention, and, further, that it is impractical and impossible to apply
3 Kawashima in relation to these claims and the present invention as a whole. There fore, Claims
4 5 and 36 are allowable.

5 6.16 The Examiner states in paragraph 10 at the bottom of Page 6 and continuing
6 on Page 7 of the Office Action, "Claims 2, 33 and 8, 13, 39, 44 are rejected under 35 U.S.C.
7 103(a) as being unpatentable over the references, as applied to claims 1, 32, and 4, 10, 35, 41,
8 respectively above, and further in view of US 5775005 (McCelland). McCelland teaches
9 providing a sock lining 28 to cover the insole. It would have been obvious to provide the insole
10 as taught above with a sock liner on top, as taught by McCelland, to provide additional comfort
11 to the wearer. The sock liner is a conventional sock liner, which is inherently capable of being
12 stretched, and therefore are a stretched material." The Applicant respectfully disagrees with the
13 Examiner and respectfully suggests that the Examiner has misunderstood and misapplied the
14 McClelland design as well as the previous references.

15 6.16.01 First, an examination of McClelland shows it to be a utility patent
16 teaching an outsole assembly, a pair of cleated windows that extend to the outsole and a pair of
17 cushioning inserts and is specifically designed for boots.

18 6.16.02 It is abundantly clear that what McClelland has in mind was to
19 take a boot sole and adapt it so that provides a cushioning support pad for two areas of the foot
20 and so that the entire assembly provides two, special, double-layer cushioning elements that also
21 provide the structural support for the shoe as well as the outsole for the shoe. It is clear from just
22 an examination of the drawings alone that the present invention is completely different from
23 McClelland. The shoe sole of the present invention does not provide cushioning for two areas fo
24 the foot, but instead is under one section of the foot, specifically the toes; the portion under the
25 toes is not for cushioning or support, but instead is for tactile sensory stimulation of the toes; the
26 toe support of the present invention does not provide completion of the outsole, but instead lies
27 within the insole and midsole for the purposes of facilitating the grasping-gripping motion of the
28 toes during walking.

1
2 6.16.03 In addition, referring also to Figure 3, the McClelland design
3 illustrates the cushion to be comprised of grooves or cleats that become the supporting structural
4 element of the shoe and its outsole. The McClelland design requires the two support pads, which
5 are comprised of two layers of cleated pads to be load bearing, structural elements of the shoe
6 and to also function as the outsole of the shoe. It is abundantly clear that what McClelland
7 intended was to have the structural elements of the shoe designed in such a manner as to also
8 provide, not just support for the shoe, but also to perform a "double duty" by creating a special
9 padding under the balls of the foot and the heel. An examination of Figures 9 and 10 of the
10 present invention show very clearly that the toe cushion does not have any grooves or cleats, but
11 is instead one smooth crescent shaped cell; the toe cushion is not a supporting structural element
12 of the shoe or an outsole, but instead, rests upon the structural support of the shoe. Therefore, it
13 is abundantly clear that the cushioning elements of the McClelland is composed of a totally
14 different material and serves a totally different purpose.

15 6.16.04 In addition, referring to Figures 1-5, the McClelland design
16 illustrates the cushioning elements to be viewed from the exterior of the shoe. The McClelland
17 design requires that the cushioning elements each have a surface exposed to the exterior, open
18 air, walking surfaces, and also have an aesthetic quality. It is abundantly clear that the
19 McClelland design requires the cushioning elements to be of such a nature and appearance that
20 they enhance the exterior appearance and augment the sporty image of the shoe. Further,
21 because the outsole of the cushioning elements are exposed, the outer cosign of the cushions
22 require that they be constructed of a material that can't withstand the elements, as well as the
23 wear and tear that the exterior of a sport shoe or boot must experience. An examination of
24 Figures 8 and 9 of the present invention shows very clearly that the cushioning element of the
25 present invention is completely within the interior portion of the shoe, having no portion, outsole
26 or otherwise, exposed to the exterior of the shoe. Additionally, because the toe cushion is out of
27 sight, exclusively in the interior fo the shoe, the cushion does not and cannot augment the
28 exterior appearance of the shoe, neither to augment the sportiness fo the shoe or for any other
quality. Further the outer casing of the toe cushion is not designed of a thick, tough material that

1 can withstand the environment and provide structural support for the shoe, but instead is made of
2 a soft, malleable material that can be manipulated by the toes and that also has a sensory
3 enhancing quality. Therefore, it is abundantly clear that the cushioning elements fo the
4 McClelland design is designed for a completely different purpose and composed of a totally
5 different material.

6 6.16.05 In addition, referring to the abstract, the McClelland design
7 teaches the cushioning element that extends to the outer edges of the sole of the shoe have
8 substantially transparent walls, whereby the other elements of the shoe can be viewed. It is clear
9 that what McClelland intended is to have a shoe that has a cushioning element that extends
10 beyond the area under the foot in areas where it is impossible to cushion the foot, so much so
11 that the cushion can be seen and can be used from the outside of the shoe. In addition,
12 McClelland intends for that part of the cushion to be seen from the outside of the sole of the shoe
13 be transparent to add novelty and interest to the exterior of the shoe. It is clear from an
14 examination of Figures 1, 3, 8, 9, 10, 11, 12, 15, 17, 18, 19, and 20, that the present invention
15 does not extend to the outer periphery of the shoe. It is also clear that the cushioning element of
16 the present invention cannot be seen from the exterior of the shoe. Additionally, it is clear that
17 the cushioning element of the present invention is not transparent, has no need to be transparent,
18 and is not claiming to be transparent. It is further clear that the cushioning element fo the
19 present invention does not, in any manner whatsoever, add any novelty or any interest to the
20 exterior of the shoe. Therefore, it is clear that he cushioning element of the McClelland shoe is
21 entirely different form the cushioning element of the present invention.

22 6.16.06 In addition, referring to Figures 1-5, the McClelland patent
23 teaches that the cushion is part of the outsole of the shoe. The McClelland requires that the
24 cushioning elements be a structural support of the sole of the shoe and of such a material that can
25 bear the weight of the foot and body of the wearer. It is clear that what McClelland intended is
26 to have a shoe sole that is comprised of several layers, which contains separate pieces that do not
27 touch each other and act like foundation supports on which the foot resides and with the layer
28 surrounding this foundation filling in the void between the two cushioning elements filling from

1 the interior and extending outwardly to the periphery of the sole. It is clear from an examination
2 of Figures 8, 9, 10 and 12, that the present invention does not place the cushioning element in the
3 outsole of the shoe, but instead places it in the insole of the shoe. The present invention does not
4 use the cushioning element as a structural support, but instead, uses the cushioning element
5 merely as an additive element to the insole. The present invention is not designed to bear the
6 weight of the foot and body of the wearer, but instead, is merely a stimulus for toes and to allow
7 the toes to perform the grasping-gripping action. The present invention is not comprised of four
8 pieces, but instead is a single crescent shaped piece. The present invention is not a foundation
9 device for the shoe, but instead, is a single piece to stimulate the tactile sense of the under toe
10 and to allow the toe to grasp and grip within the shoe. Therefore, it is abundantly clear that the
11 McClelland device is completely different from and has nothing to do with the present invention.
12

13 6.16.07 In addition, referring to Figure 4, the McClelland patent teaches
14 that the cushioning element is in addition to and underneath a foam material that "covers the
15 inserts and provides additional cushioning" (Col. 3, line 67 through Col. 4, line 1). The
16 McClelland design requires that a second cushion be placed over its cushion elements. It is clear
17 from an examination of Figures 6, 8, 10, and 12, that the present invention does not have a foam
18 material that covers the upper surfaces of the cushioning elements. In addition, the present
19 invention does not have a layer above the cushioning element, but instead, the cushioning
20 element is the upper layer, or at least one portion of the upper layer. Therefore, it is abundantly
21 clear that the cushioning element of the McClelland shoe is entirely different from the
22 cushioning element of the present invention.

23 6.16.08 It is abundantly clear that the McClelland reference is totally and
24 completely different from the present invention and has nothing whatsoever to do with the
25 present invention. Further, McClelland adds nothing to the previous references, which, as
26 previously discussed, are also totally and completely dissimilar to the present invention and the
27 combination with McClelland does not in any manner whatsoever make any portion of the
28 present invention obvious.

6.16.09 Further, and because of the foregoing, Claims 2, 33 and 8, 13, 39,

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2 44 are allowable.
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4 6.17 The Examiner states in paragraph 11 on Page 7 of the Office Action,
5 "Claims 3, 34 and 9, 14, 40, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over
6 the references, as applied to claims 1, 32 and 4, 10, 35, 41, respectively above, and further in
7 view of Official Notice. The examiner takes official notice that it is old and conventional in the
8 art to provide shoe pads, cushions, insole, etc. with a fungicide. Therefore, it would have been
9 obvious to provide the deformable padding as taught above with a fungicide, to prevent fungus."
10 As discussed in full above, the above references are totally and completely different from the
11 present invention and have nothing whatsoever to do with the present invention. The present
12 invention is a particular device for tactile stimulation of the pads of the toes during the grasping-
13 gripping motion that occurs during walking. Therefore, the Applicant respectfully disagrees
14 with the Examiner and suggests that the Examiner has misapplied the previous references.
15 While the present invention does lie within a shoe, it is essentially and primarily a means to
16 provide tactile stimulation to the toes and a physical means to recreate the grasping-gripping
17 motion of the toes. The Applicant respectfully suggests that it is not old or conventional to have
18 tactile stimulants treated with a fungicide. It is abundantly clear that the previous references are
19 completely different from the present invention and do not apply. Therefore, Claims 3, 34 and 9,
20 14, 40, 45 are allowable.
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7. For all of the above referenced reasons, it is respectfully submitted that the present invention clearly is allowable over all of the cited prior art references and the Patent Examiner is very respectfully requested to reverse his position and to allow all pending claims of invention. The Applicant's attorney would be very happy to speak with the Patent Examiner if the Patent Examiner has any questions concerning any of the argument set forth by the Applicant in this Office Action.

Respectfully submitted,

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